IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

Crl.MC.No. 2365 of 2006()

CC.517/2006 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM

.....

PETITIONER:

KOCHUMON, S/O. SHAMSUDEEN,
J.K. INVESTMENTS, RAILWAY STATION ROAD,
KANKALLIL COMPLEX, KAYAMKULAM.

BY ADV. SRI.R.REJI
SMT.SHIVA RAJA RESHMI

RESPONDENTS:

---

1. P.R. RAJENDRAN, AGED 46 YEARS,
S/O. RAGHAVAN, PUTHUVEETTIL,
THOTTATHUMKARAYIL, PATHIYOOR VILLAGE.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
STATE REPRESENTED BY THE SUB INSPECTOR
KAYAMKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR
SRI.B.RENJITHKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/03/2007, ALONG WITH CRMC NOS. 148 & 339/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NOs. 2365/06 & 148 &
399 OF 2007

Dated this the 2nd day of March, 2007

ORDER

These three Crl.M.Cs. are related to the same subject matter i.e., actions in a private complaint filed by the complainant who is the petitioner in Crl.M.C.No.148/07. Crl.M.C.No.2365/06 was filed by the accused in that case to quash the complaint. The disputes relate to a vehicle. That vehicle was seized on the basis of a search warrant issued by the learned Magistrate in this case i.e., C.C.No. 517/06. The vehicle was directed to be released to the accused. The complainant has come to this Court with Crl.M.C.No.148/07 to challenge the said order. The accused has also come to this Court for directions regarding release of the documents in respect of the vehicle. For that purpose, he has filed Crl.M.C.No.399/07.

2. A synoptic resume of events which led to these proceedings appear to be necessary for a proper resolution of the dispute. I shall refer to the parties in the manner in which they are ranked in Crl.M.C.No.148/07. One Divakaran

was admittedly the registered owner of the vehicle. He had entered into an agreement with the 2nd respondent – a financier, regarding the vehicle. The hire purchase agreement was noted in the Registration Certificate of the vehicle. The said Divakaran later entered into an agreement with the petitioner. That agreement is dated 9/1/06. Though they entered into the agreement and all other documents were allegedly handed over to the petitioner by the registered owner, the Registration Certificate could not be handed over as the same was kept by the 2nd respondent – financier. The 1st respondent/accused is the working partner of the 2nd respondent. He is an auto consultant also. It is the allegation that his auto consultancy and the office of the financier are being run adjacently in the same premises. When the petitioner became the owner under the agreement dated 9/1/06, the petitioner allegedly wanted the vehicle to be transferred to his name with the consent of the 2nd respondent. He had approached the 1st respondent/accused – an auto consultant also, to get the vehicle transferred into his name with the requisite consent of the 2nd respondent – financier. It

is the case of the petitioner that the 1st respondent as the Managing Partner of the 2nd respondent did not effect the transfer and postponed, that event holding out some excuses or the other.

3. On 22/3/06 the vehicle was seized by the Joint R.T.O. The check memo under which it is seized was handed over to the driver of the petitioner – one Biju, and that is in the possession of the petitioner. The petitioner could not get back the vehicle from the Joint R.T.O. who seized it as the 1st and 2nd respondents did not allegedly permit him to remit the road tax in respect of the vehicle. They kept the R.C. with them. The petitioner had not been shown as the registered owner in the Registration Certificate also. It is the case of the petitioner that the 1st and 2nd respondents got the vehicle transferred to the name of the 1st respondent on 28/4/06 in collusion with the said Divakaran – the registered owner and his son one Binukumar. Thereafter, on 8/5/06 making use of such document fraudulently secured by the 1st respondent in collusion with the registered owner and his son, the 1st respondent got release of the vehicle from the police station

where the seized vehicle was lodged. On 29/5/06 on coming o know of the fraud played on him by the 1st and 2nd respondents as also the registered owner and his son, the petitioner filed the present complaint alleging the commission of the offences punishable under Secs.379, 420 and 468 read with Sec.34 of the IPC. There were three accused persons in that complaint. The 1st accused was the 1st respondent herein who is, without dispute, the working partner of the 2nd respondent. The 2nd respondent was the registered owner and the 3rd accused is the son of the registered owner. The learned Magistrate on that complaint took cognizance only against the 1st respondent herein.

4. On an application filed by the petitioner, the learned Magistrate issued a search warrant and the vehicle was produced before the learned Magistrate in execution of that search warrant on 13/6/06. The petitioner herein, the 1st respondent and the 2nd respondent filed separate applications for release of the vehicle to their possession under Sec.451 of the Cr.P.C. By the impugned order dated 20/7/06, the vehicle was directed to be released to the 1st respondent/1st accused.

In the meantime, the petitioner had filed a civil suit arraying the 1st and 2nd respondents and the registered owner as parties for settlement of accounts in respect of the vehicle.

5. The petitioner has come to this Court aggrieved by the said direction to release the vehicle in favour of the 1st respondent. The 1st respondent has come to this Court to quash the proceedings against him and also for release of the vehicle's documents to him.

6. I have considered all the relevant inputs. I must note that the 1st respondent is none other than the working partner admittedly of the financier – the 2nd respondent. The learned Magistrate in the impugned order appears to have followed an oversimplified reasoning viz., the Registration Certificate stands in the name of the 1st respondent on the date when the seizure was effected as per the search warrant issued by the learned Magistrate. I shall scrupulously avoid any detailed discussions on merits of the acceptability of the rival contentions, lest, it might send an unintended message to the learned Magistrate when he again considers the matter afresh. But suffice it to say that the learned Magistrate does not

appear to have gone into the soul of the dispute. The very contention of the petitioner is that after the vehicle was seized by the Joint R.T.O. from his possession which he acquired under the agreement dated 9/1/06, fraudulent manipulations were made to get the name of the 1st respondent (working partner of the financier) endorsed as the registered owner in the Registration Certificate book of the vehicle. Without and before adverting to the acceptability of that contention, it was certainly puerile and perverse to decide the question of eligibility for interim possession only on the basis of the name of the 1st respondent appearing on the Registration Certificate. That, according to me, was certainly not a proper consideration of the dispute. That course followed borders on perversity.

7. I do further note that the original agreement dated 9/1/06 between the petitioner and the registered owner has not been produced before the learned Magistrate. Of course, the petitioner explains that the original document was produced before the civil court in the civil suit filed by him on 18/7/06 and it was not available with the petitioner for production before the learned Magistrate at the time of hearing the

petitions under Sec.451 of the Cr.P.C. The petitioner must certainly take back the original agreement from the civil court and produce it before the learned Magistrate. The petitioner has a further contention that possession of the vehicle was taken over from him/his employee by the Joint R.T.O. and not from the possession of the registered owner – Divakaran. On that aspect, Divakaran does not have a contrary case. There is no specific pleading raised or even suggestion thrown that there was any collusion between the petitioner and the said Divakaran. I am, in these circumstances, certainly of opinion that the learned Magistrate has not considered the question in the proper perspective, diligently and appropriately. The impugned order therefore, according to me, deserves to be set aside. The learned Magistrate must be directed to dispose of the matter afresh. Before such a fresh disposal, all the three contestants must be given opportunity to adduce all such further evidence which they want to. The petitioner will be given an opportunity to take back or produce the original agreement dated 9/1/06 or the court can send a letter of request to the civil court to get the document. The petitioner

shall be given an opportunity to examine other witnesses including Biju from whose possession as per the check report the vehicle was seized by the Joint R.T.O. All contestants shall also be given an opportunity to adduce any further evidence or to recall the witnesses already examined.

8. The parties shall appear before the learned Magistrate on 12/3/07 to continue the proceedings. The learned Magistrate shall dispose of the matter afresh as expeditiously as possible – at any rate, within a period of four weeks from 12/3/07, on the date on which these petitions are posted for orders. The 1st respondent shall produce the vehicle before the learned Magistrate. On the basis of the order so passed, the learned Magistrate may release the vehicle to the person who is legally entitled to such possession.

9. So far as the prayer in Crl.M.C.No.399/07 is concerned, I am satisfied that in view of the order in Crl.M.C.No.148/07, no further directions need be issued. The earlier directions issued on 30/11/06 in Crl.M.C.No.2963/06 are sufficient, according to me, to provide for the situation. So far as Crl.M.C.No.2365/06 is concerned, I find no merit whatsoever

in the contention that the allegations do not reveal any offence and that consequently the proceedings deserve to be quashed by invoking the powers under Sec.482 of the Cr.P.C. The inelegant language notwithstanding, it is very evident that the complainant was complaining of a collusive venture on the part of the accused as also the registered owner under which false documents were created to deny and defeat his rights in respect of the vehicle. I am not persuaded to agree that the complaint deserves to be quashed by invoking the powers under Sec.482 of the Cr.P.C.

10. Crl.M.Cs.2365/06 and 399/07 are dismissed. Crl.M.C.No.148/07 is allowed and the above directions (in paras-7 and 8) are issued. Parties shall now appear before the learned Magistrate on 12/3/07.

(R. BASANT, JUDGE)

Nan/